

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MALIBU MEDIA, LLC,

Plaintiff

v.

HEIDI VOLPE,

Defendant

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Civil Action No. 13-6245

**DEFENDANT'S RESPONSE
IN OPPOSITION TO MOTION FOR DEFAULT JUDGMENT
AND CROSS MOTION TO SET ASIDE ENTRY OF DEFAULT
PURSUANT TO FEDERAL RULE 55(c)**

The named Defendant, Mrs. Heidi Volpe, by and through her legal counsel, the Law Offices of Paul J. Winterhalter, P.C., hereby respond and oppose the Plaintiff's request for the entry of a Default Judgment, and by cross motion seek to set aside the previous entry of default pursuant to Federal Rule of Civil Procedure, Rule 55 (c) against her for good cause and in support thereof respond and represent as follows:

1. Admitted that Plaintiff, Malibu Media, LLC, filed a Complaint with the District Court on October 25, 2013 naming unspecified potential defendants.
2. Admitted that Plaintiff filed an Amended Complaint with this Court on February 3, 2014 apparently naming Mrs. Volpe as an individual defendant.
3. Denied. It is expressly denied Mrs. Volpe was served with the Amended Complaint on or around February 18, 2014. It is possible that a copy of the Amended Complaint was delivered to Mrs. Volpe's residence while she was at work, however the Amended

Complaint was never given to her nor was she advised at the time any such papers were delivered to family residence.

4. Admitted in part. It is admitted Mrs. Volpe has not previously filed an Answer to the Amended Complaint having only become first aware of an actual legal action filed against her upon receipt of a Notice received from the Federal District Court Clerk's Office scheduling a hearing on Plaintiff's Motion for Default Judgment which was issued on December 10, 2014.

5-6. Denied. Prior to the receipt of the Notice from the District Court Clerk, Mrs. Volpe had no prior knowledge of any Court filing against her in this matter including any request for the Entry of a Default.

7. Admitted. It is admitted Mrs. Volpe is not a minor nor incompetent. Mrs. Volpe is gainfully employed full time, married, and the mother of four teenage or older boys.

8-9. Denied. The allegations in the Amended Complaint against Mrs. Volpe are outlandish, unfounded and certainly disputed. There is no basis in law or fact to support Plaintiff's allegations against Mrs. Volpe as outlined in the Amended Complaint and if Mrs. Volpe was provided a copy of the Amended Complaint or of a motion for the entry of default on such Amended Complaint she would have entered a defense and contested the baseless allegations made against her. For the reasons more fully stated below in the Cross Motion to set aside the entry of default, good cause exists and Mrs. Volpe should respectfully be afforded the right to contest the baseless allegations made against her.

WHEREFORE, Mrs. Volpe respectfully prays this Honorable Court deny the relief sought by the Plaintiff seeking the entry of a Default Judgment and for such other and further relief as is just and proper.

**DEFENDANT HEIDI VOLPE CROSS MOTION
TO SET ASIDE DEFAULT
PURSUANT TO FEDERAL RULE 55(c)**

The named Defendant, Mrs. Heidi Volpe, by and through her legal counsel, the Law Offices of Paul J. Winterhalter, hereby presents this Cross Motion to Set Aside a previous entry of Default pursuant to Federal Rule of Civil Procedure 55(c) for proper cause, and requests leave to be permitted to file an Answer and enter a defense to the relief sought in Plaintiff's Amended Complaint, and in support thereof represents as follows:

1. As stated by the Plaintiff, and as reflected in the District Court docket, a default was entered against Defendant Heidi Volpe on April 2, 2014.

2. Mrs. Volpe has never received or known of the existence of a Complaint filed against her until sometime after the receipt of a Notice of the currently scheduled hearing issued by the Clerk of the District Court in December 2014.

3. Mrs. Volpe was not provided a copy of any documents supposedly delivered to the family residence on or around February 18, 2014.

4. Her unknowing actions of not filing an appropriate response to the Amended Complaint were clearly neither willful or culpable. Immediately upon learning of the legal action Mrs. Volpe reached out to legal counsel to investigate her options and abilities to enter a defense to the lawsuit. This pleading has followed.

5. It is not difficult to appreciate Mrs. Volpe has valid defenses to the claims made in the Amended Complaint. Mrs. Volpe is married to her husband and the mother of four teenage boys. Mrs.. Volpe is employed by a hospital system. The Complaint alleges copyright infringement of certain adult movies through the use of some computer software program. The sole nexus to Mrs. Volpe individually is the pure conjecture that she conducted certain actions

because she was the listed obligor on an internet service providers billing records. It is unquestionably clear Mrs. Volpe should be afforded the right to dispute this unsubstantiated allegation.

6. Defaults and default judgments are disfavored by courts since they are inconsistent with the federal courts' preference for resolving disputes on their merits. *See Harvey v. United States*, 685 F. 3d 939, 946 (10th Cir. 2012); *U.S. v. Signed Personal Check No. 730*, 615 F. 3d 1085, 1091 (9th Cir. 2010). Where only a default has been entered, without an accompanying default judgment, the standard for lifting a default normally is especially generous. *Collecton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 616 F. 3d 413, 418 (4th Cir. 2010).

7. No prejudice would be caused to the Plaintiff by setting aside the default and

permitting Mrs. Volpe to defend the lawsuit which has been brought against her individually simply because her Comcast bill is in her name.

WHEREFORE, Mrs. Volpe respectfully prays this Honorable Court for the good cause stated set aside the entry of default against herself individually, and grant Mrs. Volpe 20 additional days to file an appropriate Answer to the Plaintiff's Amended Complaint.

Respectfully submitted,

Law Offices of
PAUL J. WINTERHALTER, P.C.

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